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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,130	03/23/2004	Carrell W. Ewing	40026XY	2108
24197	7590	03/02/2006		
			EXAMINER	
			PATEL, ASHOKKUMAR B	
			ART UNIT	PAPER NUMBER
			2154	

DATE MAILED: 03/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/806,130	EWING ET AL.
	Examiner	Art Unit
	Ashok B. Patel	2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 01 July 2005.
- 2a) This action is FINAL.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 6-38 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 6-38 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 08/02/2005.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

1. Application Number 10/806, 130 was filed on 03/23/2004. Claims 6-38 are subject to examination. Claims 1-5 are canceled.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 6, 21 and 36 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 5,949,974. Although the conflicting claims are not identical, they are not patentably distinct from each other because these claims include the limitation which is common to claim 1 of the U.S. Patent No. 5,949,974, "a plurality of intelligent power modules (IPMs) mounted in the power supply housing and connectable to said network communications connection and thereby being in IP communication with said network power manager

application through said power manager agent application, each said intelligent power module being adapted to provide power from a power source to a corresponding power outlet among the plurality of power outlets and being in communication with said power manager agent application to provide power cycling on-off of said corresponding power outlet and at least one of power state sensing and load-sensing with respect to said corresponding power outlet in response to one or more commands."

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The following comparison as alphabetized shows the limitations that are considered common to both applications:

U.S. Patent No. 5,949,974	Instant Application NO. 10/806. 130
<p>Claim 1. A computer network (10), comprising:</p> <p>(A) a host system (12) with a network manager (20) and providing for a TCP/IP communication connection (14) and able to issue read-status (48) and write-control (50) commands;</p> <p>at least one remote node (16) with an network agent (22) connected to said TCP/IP communication connection (14) and comprising a plurality of inter-networking devices (38-44) connected to receive operating power from an uninterruptible power supply (UPS) (26);</p> <p>(C) a plurality of intelligent power modules (IPM) (30-36) connected between the UPS (26) and said plurality of internetworking devices (38-44), wherein each intelligent power module is connected to and provides at least one of power-on sensing load-sensing, or power cycling on-off for a corresponding internetworking device; modules (30-36) includes a microprocessor</p>	<p>Claim 6: <b>(A)</b> A network power manager apparatus of the type useable in a computer network having a host system with a network power manager application adapted to issue network commands and communicate network commands over a network communications connection supporting IP communications , the network power manager apparatus comprising in combination:</p> <p><b>(B)</b> a power manager agent application mounted in association with the housing and being connectable to the network communications connection;</p> <p><b>(C)</b> a plurality of intelligent power modules (IPMs) mounted in the power supply housing and connectable to said network communications connection and thereby being in IP connection with said network power manager application through said power manager agent application, each said intelligent power module being adapted to provide power from a power source to a corresponding power outlet among the</p>

<p>(220) connected by voltage means (252) to independently sense the power-on status of each of said plurality of inter-networking devices (38-44), and independently sense the load status of each of said plurality of inter-networking devices (38-44), and connected by power on/off means (242) to independently control the operating power applied to said IPM corresponding internetworking device; and</p> <p>(B) a power manager (28) with a network agent (46) connected to said TCP/IP communication connection (14) and each intelligent power module (30-36), and providing for at least one of power-on sensing, load sensing or power cycling on/off of the intelligent power module (30-36) according to receipt of said read-status (48) and write-control (50) commands.</p>	<p>plurality of power outlets and being in communication with said power manager agent application to provide power cycling on-off of said corresponding power outlet and at least one of power state sensing and load-sensing with respect to said corresponding power outlet in response to one or more commands.</p> <p>U.S. Patent No. 5,949,974 fails to teach "a power supply housing; a plurality of power outlets mounted in the power supply housing." However, it is well known in the art that the UPS does incorporate the outlets and housing. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention was made to apply the teachings of U.S. Patent No. 5,949,974 to any of the power supplies to control the outlets for cycling on-off and at least one of power state sensing and load-sensing with respect to corresponding power outlet.</p>
	Please also refer to claim 6 for rejections of Claims 21 and 36 as these claims include the same claim limitations as claim 6.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ashok B. Patel whose telephone number is (571) 272-3972. The examiner can normally be reached on 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John A. Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

App  
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JOHN FOLLANSBEE  
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